

KAMALA D. HARRIS
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General
SHARON L. O'GRADY
Deputy Attorney General
State Bar No. 102356
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5899
Fax: (415) 703-1234
E-mail: Sharon.OGrady@doj.ca.gov
Attorneys for Defendant Alex Padilla, Secretary of State

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**VOTING RIGHTS DEFENSE PROJECT,
AMERICAN INDEPENDENCE PARTY,
CLARA DAIMS, and SUZANNE
BUSHNELL,**

3:16-cv-02739-WHA

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS WITH
PREJUDICE**

Date: August 18, 2016
Time: 8:00 a.m.
Judge: The Honorable William Alsup
Trial Date: None Set
Action Filed: May 20, 2016

ALEX PADILLA, in his official capacity as Secretary of State and an indispensable party, TIM DEPUIS, in his official capacity as chief of the Alameda County Registrar of Voters, JOHN ARNTZ, in his official capacity as Director of the San Francisco Board of Elections, and DOES I-X.

Defendants.

This matter is before the Court on Defendant Secretary of State's Motion to Dismiss. The Court has reviewed and considered the motion, the papers filed in support of and in opposition to the motion, and the arguments of counsel.

The Court finds good cause to grant the motion. Plaintiff's Complaint does not present a justiciable controversy. The complaint asks this Court to grant certain relief in anticipation of the

1 California presidential primary election. On June 1, 2016, the Court denied plaintiffs' motion for
 2 a preliminary injunction. Civil Minutes, June 1, 2016, ECF No. 47. The primary election was
 3 held on June 7, 2016, rendering plaintiff's claims moot. *Protectmarriage.com-Yes on 8 v. Brown*,
 4 752 F.3d 827, 834 (9th Cir. 2014). Further, plaintiffs have not alleged standing to bring their
 5 claims. To establish standing, plaintiffs must show that: (1) they suffered an injury in fact – an
 6 invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or
 7 imminent, not conjectural or hypothetical; (2) there is a causal connection between the injury and
 8 the conduct complained of; and (3) it is likely, as opposed to merely speculative, that the injury
 9 will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61
 10 (1992) (citations and quotations marks omitted). At most, plaintiff's complaint alleges an injury
 11 that is merely conjectural or hypothetical.

12 Further, to survive a motion to dismiss, the Complaint must allege a claim that is facially
 13 plausible, that is, “the non-conclusory factual content,’ and reasonable inferences from that
 14 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). Plaintiffs' Complaint does not allege a factually
 15 plausible claim.

16 The allegations of the Complaint are insufficient to state a claim for violation of the First
 17 and Fourteenth Amendments or the Voting Rights Act as a matter of law. In *Burdick v. Takushi*,
 18 504 U.S. 428, 434 (1992), the Supreme Court held that in the context of election regulations, the
 19 courts must apply a “flexible standard” that weighs the burdens of the regulation against the
 20 government’s interest in enacting them. If the burden is severe, the regulation is subject to strict
 21 scrutiny, if not, it may be justified by important state interests. The conduct plaintiffs’ allege
 22 defendants engaged in, failing to affirmatively advise voters of their statutory right to change
 23 voter registration or, if registered as a no-part-preference voters, to request a Democratic,
 24 American Independent or Libertarian presidential primary ballot, is not close to a constitutional
 25 violation, nor does it constitute a violation of the Voting Rights Act.

26 The court lacks jurisdiction over plaintiffs’ state law mandamus claims. Section 1361 of
 27 Title 28 of the United States Code only grants a district court authority to compel “an officer or

1 employee of the United States or any agency thereof to perform a duty" Defendants are all
2 state and local officials, so Section 1361 does not apply. Moreover, the only relief plaintiffs seek
3 on their state law claims is injunctive relief, and it is an abuse of discretion for a district court to
4 issue an injunction that requires state officials to do anything more than what is required by
5 federal constitutional or statutory law. *See Trueblood v. Washington State Dept. of Soc. and*
6 *Health Services*, No. 15-35462, 2016 WL 2610233, at *7 (9th Cir. May 6, 2016) (citing *Katie A.*,
7 *ex rel. Ludin v. Los Angeles Cnty.*, 481 F.3d 1150, 1155 (9th Cir. 2007)).

8 Leave to amend the complaint need not be granted if "it is clear that the complaint could
9 not be saved by an amendment." *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d
10 940, 946 (9th Cir. 2005).

11 The Motion is hereby **GRANTED** and this action is **DISMISSED WITHOUT LEAVE**
12 **TO AMEND.**

13 **IT IS SO ORDERED.**

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The Honorable William Alsup
United States District Judge

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